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# Lembaga Lebuhraya Malaysia v Cahaya Baru Development Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO J-01–144 OF 2008

TENGKU BAHARUDIN SHAH, ABDUL MALIK ISHAK AND JEFFREY TAN JJCA

8 JUNE 2009

*Civil Procedure — Declaration — Application for — Declaratory relief — Alternative remedy under Land Acquisition Act 1960*

*Land Law — Acquisition of land — Compulsory acquisition — Compulsory acquisition by state authority for construction of highway — Whether appellant had locus standi to file objection against award — Whether appellant had interest in compensation awarded — Whether respondent estopped — Whether appellant deemed to be 'person interested' in land — Land Acquisition Act 1961 ss 2 & 37*

*Words and Phrases — 'persons interested' — Whether appellant a 'person interested' to justify filing notice of objection to land acquisition award — Land Acquisition Act 1960 s 2*

The respondent/plaintiff's land was acquired for the purpose of constructing the Senai Desaru Expressway Project in Johor ('highway project') by the appellant/defendant. The land administrator made an award in favour of the respondent in the sum of RM30,794,837. The appellant forwarded to the land office the compensation award of RM30,794,837. The land office released to the respondent 75% of the award sum and withheld 25% of the balance because the appellant had filed a notice of objection by way of Form 'N'. Unknown to the respondent, the land office had referred the appellant's notice of objection to the High Court. The appellant claimed to be a 'person interested' within the meaning of s 37(1) read with s 37(3) of the Land Acquisition Act 1960 (as amended) ('LAA 1960'). The respondent thus filed an originating summons seeking declarations that the appellant was not entitled to lodge an objection in Form 'N'; that the Form 'N' should be cancelled; and that the land office should not continue with the reference to the High Court. The learned judicial commissioner allowed the declarations and hence this appeal.

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**Held**, allowing the appeal with costs:

(1) (per **Jeffrey Tan JCA**) The said land was needed for the construction of the highway project. Highway Authority Malaysia (Incorporation) Act 1980 empowered the appellant to acquire the said land in accordance with the provisions of the LAA 1960, for a public purpose. Under s 3 of the LAA 1960, only the state authority could compulsorily acquire any land for any public purpose. The appellant could only acquire the said land through the state authority. Thereafter, the acquisition proceeded in accordance with the LAA 1960 (see para 11).

(2) (per **Jeffrey Tan JCA**) The appellant had undertaken a work of undoubted public utility which fell within the expression 'public purpose' and the award had exceeded RM15,000. All requirements of s 37(3) had been met. Thereupon, the appellant should be deemed to be a person interested under s 37(1) of the LAA 1960. The appellant also fell within the category a 'person interested', as s 2 of the LAA 1960 provides that the 'person interested' includes every person claiming an interest in compensation to be made on account of the acquisition of land under the Act (see para 14).

(3) (per **Jeffrey Tan JCA**) A declaratory order is a relief of last resort. In the instant case, there was an alternative remedy under LAA 1960. The respondent could have waited for the reference under s 38(5) of the LAA 1960 to be made by the land administrator. Even if there were no such reference within the specified period by the land administrator, as was the instant case, the respondent could have applied to court to deal with the Form N in accordance with s 38(7) of the LAA 1960. At the reference, the respondent could have raised and argued their issues on the said Form N. The application for the declarations should have been refused on that ground alone (see para 21).

(4) (per **Abdul Malik Ishak JCA**) The appellant was present at the enquiry but the respondent saw it fit not to object. That triggered the issue of estoppel against the respondent (see para 57).

(5) (per **Abdul Malik Ishak JCA**) A liberal approach must be adopted in construing the term 'person interested' as intended by the Legislature. The appellant had an interest in the compensation awarded by the land administrator and that made the appellant a 'person interested' under s 2 of the LAA 1960 (see para 61).

(6) (per **Abdul Malik Ishak JCA**) The declaratory reliefs which the respondent sought should not be granted because an alternative remedy existed by way of the Land Reference proceedings which had yet to begin. The declaratory reliefs should also not be granted because it would be contrary to public policy (see para 71).

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**[Bahasa Malaysia summary**

Tanah responden/plaintif diperoleh bagi tujuan pembinaan Projek Lebuh Raya Senai Desaru Expressway Project di Johor ('projek lebuh raya') oleh perayu/defendan. Pentadbir tanah memberikan award kepada responden berjumlah RM30,794,837. Perayu menghantar award pampasan RM30,794,837 kepada pejabat tanah. Pejabat tanah melepaskan 75% daripada jumlah award kepada responden dan menahan baki 25% kerana perayu telah memfailkan notis bantahan melalui Borang 'N'. Tanpa diketahui oleh responden, pejabat tanah telah merujuk notis bantahan perayu ke Mahkamah Tinggi. Perayu mendakwa sebagai '*person interested*' dalam maksud s 37(1) dibaca bersama s 37(3) Akta Perolehan Tanah 1960 (seperti dipinda) ('APT 1960'). Oleh itu responden memfailkan saman pemula memohon deklarasi bahawa perayu tidak berhak untuk membuat bantahan dalam Borang 'N'; bahawa Borang 'N' perlu dibatalkan; dan bahawa pejabat tanah tidak perlu meneruskan sebutan ke Mahkamah Tinggi. Pesuruhjaya kehakiman yang bijaksana telah membenarkan deklarasi tersebut dan maka rayuan ini.

**Diputuskan**, membenarkan rayuan dengan kos:

(1) (oleh **Jeffrey Tan HMR**) Tanah tersebut diperlukan untuk pembinaan projek lebuh raya. Akta Lembaga Lebuhraya Malaysia (Perbadanan) 1980 memberikan kuasa kepada perayu untuk memperoleh tanah tersebut menurut peruntukan APT 1960, untuk tujuan awam. Di bawah s 3 APT 1960, hanya pihak berkuasa negeri boleh memperoleh sebarang tanah bagi tujuan awam secara paksa. Perayu hanya boleh memperoleh tanah tersebut melalui pihak berkuasa negeri. Selepas itu, perolehan tanah tersebut diteruskan menurut APT 1960 (lihat perenggan 11).

(2) (oleh **Jeffrey Tan HMR**) Perayu telah menjalankan kerja yang tanpa diragui merupakan kemudahan awam yang terangkum dalam pernyataan '*public purpose*' dan award tersebut melebihi RM15,000. Segala keperluan s 37(3) telah dipenuhi. Oleh itu, perayu merupakan orang yang berkepentingan di bawah 37(1) APT 1960. Perayu termasuk dalam kategori '*person interested*', seperti yang diperuntukkan dalam s 2 APT 1960 bahawa '*person interested*' termasuk setiap orang yang mendakwa mempunyai kepentingan dalam pampasan kerana perolehan tanah di bawah Akta (lihat perenggan 14).

(3) (oleh **Jeffrey Tan HMR**) Satu perintah deklaratori merupakan relief terakhir. Dalam kes ini, terdapat remedi alternatif di bawah APT 1960. Responden sepatutnya menunggu sebutan yang dibuat oleh pentadbir

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tanah di bawah s 38(5) APT 1960. Sekiranya tiada sebutan dalam tempoh tertentu oleh pentadbir tanah, seperti dalam kes ini, responden seharusnya memohon kepada mahkamah untuk menguruskan Borang N menurut s 38(7) APT 1960. Pada sebutan tersebut, responden seharusnya mengemukakan dan mempertikaikan isu-isu mereka terhadap Borang N tersebut. Permohonan untuk deklarasi sepatutnya ditolak hanya berdasarkan alasan tersebut (lihat perenggan 21).

(4) (oleh **Abdul Malik Ishak HMR**) Perayu menghadiri siasatan tersebut tetapi responden mendapati tidak sesuai untuk membantah. Ini menimbulkan isu estopel terhadap responden (lihat perenggan 57).

(5) (oleh **Abdul Malik Ishak HMR**) Satu pendekatan liberal perlu digunakan dalam mentafsirkan terma '*person interested*' seperti yang dimaksudkan oleh Perundangan. Perayu mempunyai kepentingan dalam pampasan yang diawardkan oleh pentadbir tanah dan itu membuatkan perayu menjadi 'person interested' di bawah s 2 APT 1960 (lihat perenggan 61).

(6) (oleh **Abdul Malik Ishak HMR**) Relief-relief deklaratori yang dipohon oleh responden tidak sepatutnya diberikan kerana terdapat remedi alternatif melalui prosiding Rujukan Tanah yang belum dimulakan lagi. Relief-relief deklaratori juga tidak sepatutnya diberikan kerana bertentangan dengan polisi awam (lihat perenggan 71).]

**Notes**

For a case on compulsory acquisition, see 8 *Mallal's Digest* (4th Ed, 2006 Reissue) para 1876.

For cases on application for a declaration, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 2303–2329.

**Cases referred to**

*Ahmad bin Saman v Kerajaan Negeri Kedah* [2003] 4 MLJ 705, CA (refd)

*Air Express International (M) Sdn Bhd v MISC Agencies Sdn Bhd* [2008] 9 CLJ 209, HC (refd)

*Attorney-General for Canada & Anor v Hallet & Carey Ld & Anor* [1952] AC 427 (refd)

*British Association of Glass Bottle Manufacturers, Lim v Forster & Sons, Lim* (1917) 86 LJ Ch 489 (refd)

*Capper & Anor v Baldwin* [1965] 2 QB 53, QBD (refd)

*Corocraft Ltd & Anor v Pan American Airways Inc* [1969] 1 QB 616, CA (refd)

*Development & Commercial Bank Bhd v Land Administrator, Wilayah Persekutuan & Anor* [1991] 2 MLJ 180, SC (refd)

*Evans v Bartlam* [1937] 2 All ER 646; [1937] AC 473, HL (refd)

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*Government of Malaysia v Lim Kit Siang, United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12, SC (refd)
*Harriman v Harriman* [1909] P 123, CA (refd)
*Himalaya Tiles and Marble (P) Ltd v Francis Victor Coutinho (decd) by LR's* AIR 1980 SC 1118 (refd)
*Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1970] 2 All ER 871, HL (refd)
*Kembang Masyur Sdn Bhd lwn Perusahaan Sdn Bhd dan lain-lain* [2005] 4 MLJ 553, HC (refd)
*London Joint Stock Bank, Limited v Macmillan and Arthur* [1918] AC 777, HL (refd)
*London Passenger Transport Board v Moscrop* [1942] AC 332, HL (refd)
*Low v Bouverie* [1891] 3 Ch 82, CA (refd)
*Lyle-Meller v A Lewis & Co (Westminster), Ltd* [1956] 1 All ER 247, CA (refd)
*Magasu Sundram a/l T Magasu & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 5 MLJ 470; [2003] 2 CLJ 422, HC (refd)
*Maritime Electric Company, Limited v General Dairies, Limited* [1937] 1 All ER 748; [1937] AC 610, PC (refd)
*Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor* [1995] 3 MLJ 710; [1996] 1 AMR 82, CA (dist)
*Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor* [1990] 2 MLJ 229, HC (refd)
*Phileoallied Bank (M) Bhd v Sakuntalathevy d/o Manickavasagam* [2007] 1 MLJ 581, HC (refd)
*Regina v Wimbledon Justices, Ex parte Derwent* [1953] 1 QB 380, QBD (refd)
*Sakapp Commodities (M) Sdn Bhd v Cecil Abraham (Executor of the Estate of Loo Cheng Ghee)* [1998] 4 MLJ 651, CA (refd)
*Setia Usaha Tetap Kementerian Pelajaran v Collector of Land Revenue, Butterworth* [1972] 2 MLJ 155, HC (refd)
*Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2008] 6 MLJ 763, FC (refd)
*Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2007] 5 MLJ 601; [2007] 5 CLJ 71, CA (refd)
*State of Tasmania v Commonwealth of Australia and State of Victoria* (1904) 1 CLR 329 (refd)
*Sugden's Trusts, Re, Sugden v Walker* [1917] 1 Ch 511, Ch D (refd)
*Sunderlal (in both the appeals) v Paramsukhdas and others (in both the appeals)* AIR 1968 SC 366 (refd)
*Ungku Sulaiman bin Abdul Majid & Anor v Director of Lands and Mines & Anor* [2001] 6 MLJ 75, HC (refd)
*Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 3 MLJ 185; [2003] 3 AMR 341, HC (refd)
*Warburton v Loveland d Ivie & Ors* [1824–1834] All ER Rep 589, HL (refd)
*Williams v Pinckney* (1897) 67 LJ Ch 34, CA (refd)

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**Legislation referred to**

Highway Authority Malaysia (Incorporation) Act 1980 ss 11(1)(a), 22, 22(1), (2)
Land Acquisition Act 1960 ss 2, 3, 3(1), 3(1)(a), (b), (c), 8, 11(1), 12, 14, 14(2), 29A, 36, 37, 37(1), (3), 38, 38(1), (5), (7), 40A, 55(1)(a), Forms D, E, N, G, O
Rules of the High Court 1980 O 15 r 16
Specific Relief Act 1950 s 41

*Ramesh Sanghvi (Kassim Tadin Wai & Co) for the appellant.*
*RR Sethu (JD Goonting with him) (Abdul Hakim Abdul Rahman & Co) for the respondent.*

**Jeffrey Tan JCA (delivering judgment of the court):**

**[1]** This appeal against the order dated 18 December 2007 of the High Court at Johor Bahru declaring that the appellant/defendant, also known as the Highway Authority of Malaysia, was not entitled to lodge a Form N under the Land Acquisition Act 1960 ('LAA 1960'), and that the said Form N lodged by the appellant was 'wrong, void, invalid and had no legal effect', which we heard and allowed on 13 May 2009, came about in the following circumstances.

**[2]** The plaintiff was the registered owner of the land held under PTD 171003 HS(M) 2996 Mukim Plentong, Daerah Johor Bahru, Negeri Johor ('the said land'). On 18 November 2004, the Johor State Authority caused to be published in the *Gazette* the following declaration (Form D under the LAA 1960) that the said land was required for a public purpose.

> It is hereby declared that the particular lands and areas specified in the Schedule hereto are needed for the following purpose:
>
> Land Acquisition Under Paragraph (sic) 3(1)(a) of the Land Acquisition Act 1960 (Act 486), For The Purpose Of the Construction of Senai-Pasir Gudang-Desaru Expressway, Mukim Senai-Kulai, Tebrau, Plentong And Sungai Tiram, Johor Bahru For Ministry of Public Works, Malaysia.

**[3]** Upon the conclusion of the enquiry under s 12 of the LAA 1960, the land administrator awarded RM30,734,903 to the respondent as compensation for the acquistion of 19.825 hectares or 198,224.714 square metres of the said land. That award was accepted by the respondent, but was objected to by the appellant, who filed, on 25 May 2006, an 'Application That An Objection Be Referred To Court' in the requisite Form N. That Form N stated that the appellant was a person interested pursuant to s 37(3) of the LAA 1960. Pursuant to the provisions of s 29A of the LAA 1960, the

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land administrator withheld 25% of the amount of the said award for payment to the respondent. On 7 February 2007, that is, some nine months later, the respondent applied to the High Court for declarations (i) that the appellant was not entitled, even prohibited, to file the said Form N pursuant to s 38(1) of the LAA 1960, and (ii) that the said Form N was wrong, void, invalid and of no legal effect.

**[4]** Legal submissions in the High Court had proceeded along the following lines. The respondent submitted that the said land was acquired by the state authority for a public purpose under s 3(1)(a), that the said Form N was lodged on the basis that the appellant was a person interested in the said land, that it is s 3(1)(b) that provides for the acquisition of land by any person or corporation, and that the acquisition of the said land, it being under s 3(1)(a), ruled out the involvement of the appellant. In support, the respondent cited the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor* [1995] 3 MLJ 710; [1996] 1 AMR 82. The appellant submitted that it was a body corporate established under s 3(1) of the Highway Authority Malaysia (Incorporation) Act 1980 ('HAMA'), that s 22 of the HAMA empowered the appellant to acquire land in accordance with written law relating to acquisition of land, that the state authority may acquire the land for the appellant, that the words 'public purpose' included the purpose of the appellant, as the appellant was involved in the Gudang-Desaru Expressway project, (the appellant cited the case of *Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 3 MLJ 185; [2003] 3 AMR 341), that the Ministry of Public Works, Malaysia and the Malaysian Government under the HAMA, had charged the appellant with the task to supervise and execute inter-urban highways including the Senai-Pasir Gudang Expressway, that the appellant had to acquire lands under the LAA 1960 to realise those projects, that the acquisition of the said land, although by the state authority, was for the public purpose of the (construction of) said expressway, and therefore involved the appellant, and that the appellant was a person interested as the compensation was paid by the appellant.

**[5]** In so far as the High Court was concerned, 'The principal issue to be determined is whether the defendant (appellant) is a person interested within the meaning of s 37. If the question is answered in the affirmative, then the defendant is entitled to object to the award of compensation and to file the Form N to the land administrator requiring that he refer the matter to court for its determination', which the High Court then resolved in the following manner:

> The question as to the defendant's eligibility to lodge the Form N depends on whether the defendant is 'a person interested' within the meaning of s 37(3). According to s 37(3) 'a person interested' is a person on whose behalf the land was

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A acquired pursuant to s 3. In the present case the acquisition by the state authority was made under s 3(1)(a) — 'for any public purpose'. Is there anything in the notification in the state *Gazette* to state or otherwise indicate that the acquisition of the land is needed by the defendant for the Gudang-Desaru Expressway project? There is, upon close scrutiny of the notification, no reference to or mention of the
B defendant or of the defendant's involvement in the Gudang-Desaru Expressway project. According to the notification in the state *Gazette*, the land is being acquired by the state authority for the Ministry of Public Works, Malaysia.

It is pertinent to note that the defendant is a body corporate established under the HAMA. There is a specific enabling provision in para (b) in s 3(1) empowering the
C state authority to acquire land which is needed by any corporation for any purpose which in the opinion of the state authority is beneficial to the economic development of Malaysia. On the facts as disclosed by the affidavit evidence it is clear that the state authority acquired the land for the Ministry of Public Works, Malaysia for 'any public purpose' under para (a) in s 3(1). The state authority did not acquire the land under para (b) in s 3(1). It would be stretching the facts to
D conclude that notwithstanding the clear and express words in the notification in the state *Gazette* the acquisition of the land by the state authority was made because the land was needed by the defendant.

According to s 37(3) any person or corporation on whose behalf the land was acquired pursuant to s 3 shall be deemed to be a person interested in the land. The
E notification in the state *Gazette* declares that the intended acquisition is made for the Ministry of Public Works, Malaysia. Applying the criteria in s 37(3) the person interested would be the Ministry of Public Works, Malaysia. The defendant is empowered under the HAMA to hold movable and immovable property (s 3(1)). Further, when any immovable property cannot be acquired by agreement, such
F property may be acquired by agreement, such property may be acquired in accordance with the provisions of any written law (s 22). The reference to 'any written law' would include the LAA. Accordingly, learned counsel for the defendant submitted that in the present case as the land was acquired for the defendant. The defendant's contention, however, is unsupported by the wordings of the notification in the state *Gazette* which state unequivocally that the
G acquisition of the land is made for the Ministry of Public Works, Malaysia. If the defendant's contention is correct, then the acquisition by the state authority would have been made under para (b) of s 3(1).

In *Universiti Malaya & Anor v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 3 MLJ 185; [2003] 3 AMR 341 ... The High Court held that: (i) the
H decision by the land administrator is an administrative decision. Any objection under s 38(1) is a reference to the High Court and is in the nature of an original hearing. Further s 44(2) empowers the court to consider the interest of all parties, and (ii) the acquisition of the said land was for LLM, hence their presence during the inquiry, and to strike out the LLM's application would take away his rights as
I enunciated under s 44(2). In that case, however, there are two distinguishing features. Firstly, the acquisition was made under para (b) in s 3(1) unlike the present case where the acquisition was made under para (a) in s 3(1). Secondly, in that case LLM was present at the hearing of the enquiry before the land administrator whereas in the present case there is nothing in the affidavit evidence of the plaintiff and the defendant to indicate if the defendant was present at the

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hearing of the enquiry or at all. Accordingly, this case is peculiar on its own facts and is of no aid to the defendant's contention.

In *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor* [1995] 3 MLJ 710; [1996] 1 AMR 82 ... The Court of Appeal held that the term 'person interested' in s 37(3), includes every person claiming an interest in the compensation to be made on account of the acquisition of land under the LAA. However, acquiring land for a public purpose could only come under s 3(a) of the LAA and nowhere else and this rules out the involvement of any other person or corporation on whose behalf the scheduled land is acquired by the state authority. In the result the Court of Appeal held that the appellant was not a person interested in the first place. Abdul Malek Ahmad J (as he then was) speaking for the Court of Appeal at p 716 (MLJ); p 89 (AMR) said:

> A proper reading of s 3 then and now makes it clear that the state authority acquires for itself for the purposes under para (a) and (c) but acquires on behalf of another under para (b) and that is only for a person corporation undertaking a work which in their opinion is of public utility up to 12 September 1991 and only for a person or corporation for any purpose which in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public after the 13 September 1991. This reasoning fits in nicely with the word, and on whose behalf such land was acquired pursuant to the provisions of s 3, because that was what it is and should be namely that it was acquired by the state authority on their behalf.

Similarly in the present case the acquisition of the land was made under s 3(1)(a) by the state authority for the Ministry of Public Works, Malaysia for 'any public purpose'. If the acquisition was made for any person or corporation under s 3(1)(b), then there may be a merit in the argument that the defendant is a person interested within the meaning of s 37(3). In the premises the defendant's contention that it is a person interested and as such is entitled to lodge Form N objecting to the amount of the compensation awarded is without any basis and unsupported by the notification in the state. For the above reasons the court grants an order in terms of the plaintiff's application in prayers (1), (2), (3) and (4).

**[6]** In the considered opinion of the High Court, the appellant was not an interested person within the meaning of s 37 of the LAA 1960 read together with s 3 of the same said Act. Thereupon, the High Court granted the declarations. Hence this appeal which we found had merit and deserved appellate interference.

**[7]** What struck us first and foremost were the findings of fact, which with respect were either off the mark or short of what it should be. The High Court made the following findings of fact, viz, (i) in the *Gazette* notification 'there was no reference to or mention of the (appellant) or of the (appellant's) involvement in the Gudang-Desaru Expressway ('expressway')', (ii) 'the state authority acquired the land for the Ministry of Public Works, Malaysia for

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'any public purpose' under para (a) in s 3(1)', (iii) 'the state authority did not acquire the land under para (b) in s 3(1)', (iv) it was not true that 'the acquisition of the land by the state authority was made because the land was needed by the defendant', and (v) the appellant was not present at the enquiry.

**[8]** The evidence before the High Court took the form of three affidavits, two for the respondent and one for the appellant. In affidavit dated 2 April 2007, inter alia, it was affirmed on behalf of the respondent that the pertinent Form G under the LAA 1960 was exhibited as exh B (see para 11 of p 22 of the appeal record ('AR')). In affidavit dated 5 April 2007, inter alia, it was affirmed on behalf of the appellant at the enquiry (see para 9 of p 27 of the AR), that the said acquisition was for the construction of the expressway by the appellant (see para 8 of p 27 of the AR), and that the appellant was an interested person by reason of the fact that the compensation was paid by the appellant and that the appellant had an interest in the amount of the compensation (see para 10 of p 27 of the AR). In the last affidavit dated 8 May 2007, inter alia, it was affirmed on behalf of the respondent that the appellant '*merupakan pihak yang ditanggungjawabkan oleh Kementerian Kerjaraya Malaysia dan ditanggungjawabkan untuk membuat pembayaran amaun pampasan kepada [respondent] tetapi ianya tidak menjadikan [appellant] berhak membantah di bawah Peruntukan Seksyen 37(3) ...*' (see para 7 of p 30 of the AR). That evidence was in controversy, but yet was left by the wayside without as much as a glance. If that were not so, there ought reasonably to have been the finding of the High Court, was for the purpose of the construction of the said expressway by the appellant, in contradistinction to the finding of the High Court, was for the purpose of the construction of the said expressway by the appellant (para 8 of p 27 of the AR), that the exhibited Form G duly stated that the compensation was objected to by the respondent, and that the compensation for the said acquisition was paid by the appellant (see para 10 of p 27 of the AR). Those were the findings of fact that could have been readily made, as it was admitted by the respondent that the appellant '*merupakan pihak yang ditanggungjawabkan oleh Kementerian Kerjaraya Malaysia dan ditanggungjawabkan untuk membuat pembayaran amaun pampasan kepada [respondent] ...* '. The law should have been applied to those facts as well.

**[9]** The appellant was established by the Highway Authority Malaysia (Incorporation) Act 1980 (HAMA 1980). Section 22 of the HAMA 1980 reads as follows:

> 22 General Power to acquire land.
>
> (1) Where any immovable property, not being State land or reserved land is needed to be acquired for the purpose of this Act and cannot be

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acquired by agreement, such property may be acquired in accordance with the provisions of any written law relating to the acquisition of land for a public purpose for the time being in force in the State in which the property is situated and any declaration required under any such written law that the land is so needed may be made notwithstanding the compensation is to be paid out of the funds of the Authority, and the said declaration that the land is needed for a public purpose made in accordance with the said written law.

(2) Expenses and compensation in respect of any immovable property acquired under this section shall be paid by the authority.

(3) Where any immovable property has been acquired under this section, the Authority shall take out the necessary document of title in respect of the property and shall pay any rent to which the property is subject.

**[10]** The effect of that s 22(1) is that where any private land is needed to be compulsorily acquired for the construction of highways, then the private land may be acquired in accordance with any written law relating to the acquisition of land for a public purpose. And the declaration that the private land is so needed shall have effect as if it were a declaration that the private land is needed for a public purpose made in accordance with the said written law, notwithstanding that the compensation is paid by the respondent. Under the HAMA 1980, which was the case, the said land of the acquired in accordance with the written law, namely the LAA 1960, for a public purpose. The said land of the respondent could not have been acquired in accordance with the LAA 1960 under sub-s 3(1)(b) or (c). And notwithstanding that the compensation was paid by the appellant, it remained that the said Form D was a declaration that the said land was needed for a public purpose. The said Form D might have been silent on the specific public purpose. The said Form D was not the only evidence. There was extant the undisputed evidence that the said land was needed to be acquired for the purposes of the HAMA 1980 and indeed was acquired for the construction of the expressway by the appellant, that the appellant at the enquiry had objected to the amount of the compensation, and that the compensation was paid to the appellant. So reasonably, it could not be held, but unfortunately it was, that there was no evidence that the appellant, whom our learned brother, Abdul Malik Ishak JCA, lightheartedly dubbed the paymaster, was involved in the construction of the expressway and or that the said land was acquired by the state authority for the appellant.

**[11]** Given the facts, both undisputed and or admitted, and the applicable law, the following would have been the probable scenario. The said land was needed for the construction of the expressway. The HAMA 1980 empowered the appellant to acquire the said land in accordance with the provisions of the

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LAA 1960, for a public purpose. But under s 3 of the LAA 1960, only the state authority could compulsorily acquire any land which is needed (a) for any public purpose; (b) by any person or corporation for any purpose which in the opinion of the state authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or (c) for the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes. In the result, the appellant could only acquire the said land through the state authority. It could be presumed that there would have been some application to the state authority to acquire the said land for a public purpose, of course on the basis that the expenses and compensation in respect of the acquisition of the said land would be paid by the appellant (see s 22(2) of the HAMA 1980). Thereafter, the acquisition proceeded in accordance with the LAA 1960. As said, the said Form D had to state that the said land was needed for a public purpose, and the said Form D had effect as if it were a declaration that the land was needed for a public purpose made in accordance with the LAA 1960. Upon the conclusion of the enquiry, the land administrator made the award of compensation which the appellant then objected to.

**[12]** In relation to objections to awards, s 37(1) of the LAA 1960 provides as follows:

> 37 Application to Court
>
> (1) Any person interested in any scheduled land who, pursuant to any notice under section 10 or 11, has made a claim to the Land Administrator in due time and who has not accepted the Land Administrator's award thereon, or has accepted payment of the amount of such award under protest as to the sufficiency thereof, may, subject to this section make objection to —
>
> (a) the measurement of the land;
>
> (b) the amount of the compensation;
>
> (c) the persons to whom it is payable;
>
> (d) the apportionment of the compensation.

**[13]** Section 37(3) spells out 'any person interested' as follows:

> (3) Where the total amount of any award in respect of any scheduled land exceeds fifteen thousand ringgit any Government or any person or corporation undertaking a work which, in the opinion of the State Authority is of public utility, and on whose behalf such land was

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acquired pursuant to section 3, shall be deemed to be a person interested in any scheduled land under subsection (1), and may make objections on any of the grounds specified in subsection (1).

**[14]** As seen hereinbefore, the state authority had declared the said land as needed for a public purpose, on behalf of the appellant the state authority had acquired the said land pursuant to s 3 of the LAA 1960, the appellant had undertaken a work of undoubtedly public utility which fell plainly within the expression 'public purpose' (for an analogy, see *Ahmad bin Saman v Kerajaan Negeri Kedah* [2003] 4 MLJ 705), and the award had exceeded RM15,000. All the requirements of s 37(3) had been met. Thereupon, indeed there and then, the appellant should also be deemed to be a person interested under s 37(1) of the LAA 1960. Also, the appellant fell as well within the category a 'person interested' includes 'every person claiming an interest in compensation to be made on account of the acquisition of land under the Act' (see *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor*). Really, there was no need for any construction of s 37, seemingly to be read together with s 3, which was totally misplaced.

**[15]** That apart, we were also not in agreement with the cavalier approach taken by the High Court in the grant of the said declaratory orders.

**[16]** Section 41 of the Specific Relief Act 1950 provides as follows:

> Discretion of court as to declarations of status or right.
>
> Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to the character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in that suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so.

**[17]** In *Government of Malaysia v Lim Kit Siang, United Engineers (M) Berhad v Lim Kit Siang* [1988] 2 MLJ 12, the former Supreme Court per Hashim Yeop Sani SCJ (as he then was) enunciated as follows:

> Section 41 does not sanction every form of declaration but only a declaration that the plaintiff is entitled to a specific legal character or to any right as to property. Therefore any person who has 'a right to any legal character' may bring an action against anyone who denies that right. The prerequisite for such a declaratory action is that the plaintiff must first establish that he qualifies as a person entitled to any legal character or to any right as a property. The legal character or the right must exist at the time the action is instituted.

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**[18]** In *Kembang Masyur Sdn Bhd lwn Perusahaan Sdn Bhd dan lain-lain* [2005] 4 MLJ 553, per Arifin Zakaria JCA (as he then was, sitting as judge of the High Court), it was held that to obtain the declartory order, it must be first proved that some right has been adversely affected.

> Deklarasi adalah satu cabang undang-undang administratif dan memberi 'requisite relief' sebelum kerosakan berlaku. Di dalam kes ini perintah deklarasi yang dipohon tidak berkesan kerana ia hanya akan menentukan status dan hak undang-undang pihak-pihak terlibat sahaja. Deklarasi yang dipohon tidak harus dibenarkan kerana plaintif gagal membuktikan hak-haknya terjejas, sebaliknya jika perintah deklarasi dibenarkan, maka ini akan memudaratkan masyarakat umum kerana plaintif memohon agar jalan-jalan dan 'fly-over' yang telah siap dibina dirobohkan.

**[19]** 'So long as the applicant for a declaration can show he has some legal right of his own to advance, the court can make the necessary declaration which the applicant seeks' (*Ungku Sulaiman bin Abdul Majid & Anor v Director of Lands and Mines & Anor* [2001] 6 MLJ 75 per Abdul Malik Ishak JCA).

**[20]** That the court can make does not mean that the court must make the declaration, as the remedy is discretionary in nature. Gopal Sri Ram JCA (as he then was) in *Sakapp Commodities (M) Sdn Bhd v Cecil Abraham (Executor of the Estate of Loo Cheng Ghee)* [1998] 4 MLJ 651 thus put it:

> It is beyond dispute that the remedy of declaration is discretionary in nature ... Although s 41 is not a complete code upon the subject of declaratory decrees (*Attorney General of Hong Kong v Zauyah Wan Chik & Ors and another appeal* [1995] 2 MLJ 620) and the power to make a declaration is almost unlimited (*Hanson v Radcliffe Urban District Council* [1922] 2 Ch 490 at p 507 per Lord Sterndale MR), yet, the remedy of declaration may be refused upon settled principles. Thus, generally speaking, the court will not grant a declaratory judgment where an adequate alternative remedy is available (*Manggai v Government of Sarawak & Anor* [1970] 2 MLJ 41) or upon an issue of no practical consequence (*Lim Kim Cheong v Lee Johnson* [1993] 1 SLR 313) or where it may be premature to grant a declaration (*Rediffusion (Hong Kong) Ltd v A-G of Hong Kong & Anor* [1970] AC 1136) or where a plaintiff is guilty of laches (*Faber Merlin (M) Sdn Bhd v Lye Thai Sang & Anor* [1985] 2 MLJ 380) or other inequitable conduct (*City of London v Horner* (1914) 111 LT 512) or where a 'cloaked declaration', that is to say, a declaration for a collateral purpose (*Trawnik & Anor v Ministry of Defence* [1984] 2 All ER 791) or with an improper motive, is sought (*Everett v Griffiths* [1924] 1 KB 941 at p 960). We wish to make in plain that this list is by no means exhaustive. We merely seek to demonstrate the wide variety of circumstances in which declaratory relief may be denied in the exercise of discretion.

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**[21]** Indeed, apart from case law, s 41 itself provides that 'no court shall make any such declaration where the plaintiff, being able to seeks further relief than a mere declaration or title, omits to do so'. This position is that the grant of a declaratory order is discretionary and 'no action or other proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the court may make binding declarations of right whether or not consequential relief is or could be claimed'.( O 15 r 16 of the Rules of the High Court), but 'no court shall make any declaration where the plaintiff, being able to seek further relief than a mere declaration or title, omits to do so' (see *Phileoallied Bank (M) Bhd v Sakuntalathevy d/o Manickavasagam* [2007] 1 MLJ 581, where it was held by Mohd Hishamuddin J, as he then was, that 'further relief in the above proviso means alternative remedies'). A declaratory order is a relief of last resort. And in the instant case, there was an alternative remedy under the LAA 1960. The respondent could have waited for the reference under s 38(5) of the LAA 1960 to be made by the land administrator. Even if there were no such reference within the specified period by the land administrator, as was the instant case, the respondent could have applied to court (constituted under s 40A of the LAA 1960) to deal with the said Form N in accordance with s 38(7) of the LAA 1960. And at reference, be it under s 38(5) or 38(7) of the LAA 1960, the respondent could have raised and argued their issues on the said Form N (for an analogy, see *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2008] 6 MLJ 763, where it was held by Zulkefli FCJ that the issue of non-compliance of s 14 of the LAA 1960 should have been taken up and argued at the hearing of the objection in the reference under s 36 of the LAA 1960). Suffice to say that the application for the declarations should have been refused on that ground alone.

**[22]** It was for those reasons that we had allowed the appeal.

**Abdul Malik Ishak JCA:**

THE BRIEF FACTS

**[23]** The respondent plaintiff owned a piece of land. That land was acquired for the purpose of the Senai Desaru Expressway Project in Johor ('highway project'). The land administrator made an award in favour of the respondent plaintiff as the landowner in the sum of RM30,794,837. The appellant defendant forwarded to the land office the compensation award of RM30,794,837.

**[24]** The land office had initially released to the respondent plaintiff's solicitors a sum of RM23,051,177.25 being 75% of the total award handed

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down by the land administrator. However, a sum of RM7,683,725.75 being 25% of the balance was withheld by the land office because the appellant defendant had filed a notice of objection pertaining to the issue of the quantum of the award by way of Form 'N'.

**[25]** Unknown to the respondent plaintiff, the land office had referred the appellant defendant's notice of objection to the award in Form 'N' to the High Court on 25 May 2006. The appellant defendant claimed to be a 'person interested' within the meaning of s 37(1) read with s 37(3) of the Land Acquisition Act 1960 (as amended) ('LAA 1960').

**[26]** Unhappy with the turn of events, the respondent plaintiff filed an originating summons against the appellant defendant and sought a declaration that the appellant defendant was not entitled to lodge an objection in Form 'N' to the award. At the same time, the respondent plaintiff also sought a declaration that the said Form 'N' that was filed was wrong, should be cancelled, invalid and having no effect in law. The respondent plaintiff further sought an order that the said Form 'N' be cancelled and withdrawn from the Johor Bahru land office and with a further order that the Johor Bahru land office was not required to continue with the reference to the High Court to hear the objections filed by the appellant defendant by way of Form 'N'.

**[27]** On 18 December 2007 the learned judicial commissioner allowed the declarations sought by the respondent plaintiff. Dissatisfied, the appellant defendant filed an appeal to this court.

ANALYSIS

**[28]** In considering whether the appellant defendant, for whom the Ministry of Public Works acquired the subject land, has a personal interest to be heard in order to object to the quantum of the award as a 'person interested' within the meaning of s 37 of the LAA 1960 one must take into account that the very initial step that led to the issuance of the declaration that the subject land was required for a public purpose under s 8 of the LAA 1960 was when the appellant defendant sent a letter dated 24 August 2004 to the Ministry of Public Works stating that by virtue of the Pekeliling Ketua Pengarah Tanah dan Galian ('KPTG') Bilangan 3/1979 it required a body like the appellant defendant to submit any application for any subject land that was needed to be acquired for any highway project to be made direct through the Ministry of Public Works.

**[29]** In short, the letter dated 24 August 2004 by the appellant defendant to the Ministry of Public Works explained that the procedure for acquisition

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of land under s 3(1)(a) of the LAA 1960 through the Ministry of Public Works must be observed in accordance with the KPTG's circular. It was for this reason that the appellant defendant forwarded to the Ministry of Public Works 25 sets of plans for the lands that were needed to be acquired for the highway project and required the Ministry of Public Works to submit these 25 plans to the KPTG land acquisition division.

**[30]** This was then followed by the letter dated 2 September 2004 from the Ministry of Public Works to the KPTG wherein the former required the latter to take the relevant steps to acquire the lands from the Johor State Authority and the Ministry of Public Works then proceeded to forward to KPTG the 25 plans together with the KPTG's circular under the appellant defendant's letter dated 24 August 2004.

**[31]** It was based on these background facts that prompted the Johor Bahru land office to issue the declaration under s 8 of the LAA 1960 declaring that the lands were to be acquired pursuant to s 3(1)(a) of the LAA 1960 for the construction of the highway project for the Ministry of Public Works.

**[32]** The nexus between the appellant defendant and the Ministry of Public Works and the fact that the appellant defendant is a statutory agency of the Ministry of Public Works by way of a government *Gazette* dated 24 February 2004 vide PU (A) 206 was entirely overlooked by the learned judicial commissioner.

**[33]** It must be borne in mind that by virtue of s 11(1)(a) of the Highway Authority Malaysia (Incorporation) Act 1980, the appellant defendant has a duty to supervise and execute the design, construction and maintenance of highways as determined by the Government of Malaysia.

**[34]** The appellant defendant's representative attended the enquiry proceedings and participated by raising objections yet the learned judicial commissioner in his judgment made a finding that there was nothing in the affidavit evidence of the parties to show that the appellant defendant was present at the enquiry or at all. The documentary evidence especially at para 9 of the appellant defendant's affidavit in reply would show that the appellant defendant had not only averred that the appellant defendant was present at the enquiry but had gone further to raise the issue of estoppel in that the respondent plaintiff had never objected to the presence of the appellant defendant at the enquiry. I shall allude to the issue of estoppel in the later part of this judgment.

**[35]** The appellant defendant's averment was not disputed by the respondent plaintiff. The latter averred in its affidavit in reply at para 8 to the

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effect that the appellant defendant's presence at the enquiry was to obtain the views of the appellant defendant bearing in mind that the latter was to pay to the respondent plaintiff the compensation awarded by the land administrator. In that affidavit in reply, the respondent plaintiff conceded that the presence of the appellant defendant at the enquiry was agreed to by the respondent plaintiff.

**[36]** The learned judicial commissioner also failed to consider that by virtue of s 11(1) of the LAA 1960 the decision falls entirely with the land administrator whether to serve the Form 'E' notice of enquiry to 'any person whom he knows or has reason to believe to be interested therein'. And Form 'E' was served to the appellant defendant to attend the enquiry proceedings which meant that the appellant defendant had an interest to object to the quantum of the award as a 'person interested' in the context of s 37 of the LAA 1960.

**[37]** And it must be emphasised that the service of Form 'E' onto the appellant defendant was done within the provisions of s 55(1)(a) of the LAA 1960 which stipulates that:

> a copy of every notification, declaration and other document required by this Act to be served upon any person interested in any scheduled land shall also be served upon a representative of any Government, person or corporation on whose behalf the proceedings were instituted pursuant to section 3.

**[38]** The appellant defendant's representative had not only attended the enquiry but had made it known, loud and clear, to the land administrator as well as to the respondent plaintiff that the appellant defendant had objections to the award in relation to the issues of severance and injurious affection. The land office notes of proceedings would bear this out. Unfortunately, this fact was not made known by the respondent plaintiff to the High Court and the land office notes of proceedings were not transmitted to the High Court.

**[39]** The written award of the land administrator by way of Form 'G' was transmitted to the appellant defendant by virtue of s 14 of the LAA 1960. This meant that the land office acknowledged the appellant defendant as a 'person interested' within the meaning of s 37 of the LAA 1960.

**[40]** Section 2 of the LAA 1960 defines the term 'person interested' to include 'every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant ... at will'. As the 'paymaster' of the highway project, so to speak, the appellant defendant who was served with Form 'E' and who attended the enquiry and who objected to the award of compensation by the land

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administrator and having being served with the written award by the land administrator as reflected in Form 'G' should be construed as a 'person interested' within the meaning of s 37(1) read with s 37(3) of the LAA 1960.

**[41]** The respondent plaintiff argued that the appellant defendant has no legal interest under s 37 of the LAA 1960 to lodge an objection because, so it was said, that the appellant defendant was not the party interested. It was submitted that the fact that the appellant defendant was 'hurt' in its pocket did not make the appellant defendant an interested party or an injured party. The latin phrase *damnum sine injuria* (the rule of law is that the exercise of an ordinary right is no wrong even if it causes damage) was vigorously applied by learned counsel for the respondent plaintiff.

**[42]** According to the respondent plaintiff the source of payment emanating from the appellant defendant was immaterial. It cannot confer any right or render the appellant defendant who was the payer as a 'person interested' in the acquisition. It was argued that the appellant defendant paid the acquisition sum of RM30,794,837 on behalf of the Ministry of Public Works and so the objection to the award must emanate from and lodged by the Ministry of Public Works and not the appellant defendant.

**[43]** The appellant defendant filed Form 'N' pursuant to s 38(5) of the LAA 1960 which reads as follows:

> On receiving any application under subsection (1) the Land Administrator shall, subject to section 39, (within [six] months) refer the matter to the Court by a reference in Form O.

**[44]** It was not disputed that the appellant defendant's Form 'N' was filed and accepted by the land administrator as having been filed within time. The land administrator then rightly referred the appellant defendant's objections to the court. This court in *Singapore Para Rubber Estate Ltd v Pentadbir Tanah Daerah Rembau, Negeri Sembilan* [2007] 5 MLJ 601 at p 607; [2007] 5 CLJ 71 at p 78, in relation to s 38 of the LAA 1960 said:

> The wordings of s 38 and Form N were crystal clear in that the onus was on the appellant to do the needful, and for the land administrator to comply with the directions of the appellant, after having received the completed form.

**[45]** It cannot be denied that the appellant defendant had done the needful by filing Form 'N' within time and had paid the sum of RM3,000 as deposit. The land administrator had no choice but was obliged under the law to refer the appellant defendant's objection to the court.

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**[46]** The wordings of s 38 of the LAA 1960 are very clear and explicit and effect must be given to it. As Tindal CJ said in *Warburton v Loveland d Ivie & Ors* [1824–1834] All ER Rep (HL) 589 at p 591:

> Where the language of the Act is clear and explicit, we must give effect to it whatever may be the consequences, for in that case the words of the statute speak the intention of the Legislature.

**[47]** Indeed the words of the Legislature must be given effect. Section 38 of the LAA 1960 cannot be said to be enacted in vain.

**[48]** Another ground advanced by the appellant defendant was this. When the learned judicial commissioner allowed the declarations sought by the respondent plaintiff on 18 December 2007, the land administrator had already referred the appellant defendant's objection to the High Court by way of Form 'O' and the High Court at Johor Bahru had already registered Form 'O' as the Land Reference Proceedings No 15–40 of 2007 even before 18 December 2007. What would be the effect of these two proceedings?

**[49]** To be fair to the learned judicial commissioner, this conflicting factual matrix was not before him when he decided to allow the declarations on 18 December 2007 in favour of the respondent plaintiff.

**[50]** Six observations must be made here. Firstly, that currently there is a pending Land Reference Proceedings No 15–40 of 2007 before the High Court Johor Bahru that must be heard and which has not been heard and disposed of. Secondly, that Form 'O' that was issued by the land office and transmitted to the High Court Johor Bahru clearly stated that the appellant defendant was objecting to the award that was too high and described by the appellant defendant as unreasonable. Thirdly, if the learned judicial commissioner's order dated 18 December 2007 allowing the declarations were not set aside then this would mean that there are duplicity of proceedings on the same issue bearing in mind that the Land Reference Proceedings No 15–40 of 2007 has not been disposed of yet. Fourthly, in the context of s 37 of the LAA 1960, the issue of whether the appellant defendant had the locus to file Form 'N' will have to be determined by the Land Reference Court. Fifthly, had the learned judicial commissioner knew of the pending Land Reference Proceedings No 15–40 of 2007 he would not have made those declaratory orders on 18 December 2007 because by doing so he would be tantamount to usurping the Land Reference Court. Sixthly, the duplicity of proceedings constitutes an abuse of the process of the court.

**[51]** As promised, I will now say something about the issue of estoppel. Various textbook writers approach the subject of estoppel in different ways

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and styles. Thus Taylor, *A Treatise on the Law of Evidence* (12th Ed) at p 86 regards estoppel as part of the law of evidence and puts them as analogous to presumptions. Stephen, *A Digest of the Law of Evidence* (12th Ed) at p 217 treats estoppel as part and parcel of adjectival law. While Phipson, *The Law of Evidence* (11th Ed) at p 923 says that estoppel 'may in many cases be regarded as a rule of substantive law' and in arriving at that conclusion Phipson relies on *Low v Bouverie* [1891] 3 Ch 82; *Re Sugden's Trusts, Sugden v Walker* [1917] 1 Ch 511 and *Williams v Pinckney* (1897) 67 LJ Ch 34 (CA). Rupert Cross, DCL, *Evidence*, (4th Ed) at pp 306–307 classifies estoppel as part of the law of evidence as well as part of the substantive law. Best, *The Principles of the Law of Evidence*, (12th Ed) at p 462 treats estoppel as 'belonging rather to substantive than to adjective law'.

**[52]** The views of these textbook writers are quite interesting and they are supported and reinforced by high authority. For starters, I would refer to the case of *London Joint Stock Bank, Limited v Macmillan and Arthur* [1918] AC 777 at p 818, where Viscount Haldane spoke of the principle of estoppel in this way:

> it is hardly a rule of what is called substantive law in the sense of declaring an immediate right or claim. It is rather a rule of evidence, capable not the less on that account of affecting gravely substantive rights.

**[53]** This would be followed by the case of *Evans v Bartlam* [1937] 2 All ER 646 at p 653; [1937] AC 473 at p 484 (HL), where Lord Wright had this to say:

> estoppel is a rule of evidence that prevents the person estopped from denying the existence of a fact.

**[54]** Next, it would be the case of *Maritime Electric Company, Limited v General Dairies, Limited* [1937] 1 All ER 748 at p 754; [1937] AC 610 at p 620, where Lord Maugham speaking for the Privy Council said:

> This conclusion must follow from the circumstance that an estoppel is only a rule of evidence which under certain special circumstances can be invoked by a party to an action.

**[55]** In *Low v Bouverie* at p 105 (CA), Bowen LJ succinctly said:

> Estoppel is only a rule of evidence; you cannot found an action upon estoppel.

**[56]** The description of estoppel by Bowen LJ in *Low v Bouverie* was dutifully followed by Hodson LJ in *Lyle-Meller v A Lewis & Co (Westminster),*

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*Ltd* [1956] 1 All ER 247 at pp 252–253, and by Farwell LJ in *Harriman v Harriman* [1909] P 123 at 144 (CA).

**[57]** Since estoppel is a rule of evidence, the evidence here showed that the appellant defendant was present at the enquiry but the respondent plaintiff saw it fit not to object and that would definitely trigger the issue of estoppel against the respondent plaintiff. We are concerned here with estoppel by election where A, as an analogy, in his dealing with B, being at liberty to adopt either of two mutually exclusive steps (*Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1970] 2 All ER 871 (HL), per Viscount Dilhorne at p 886, and Lord Diplock, at p 894), proceedings, courses of action, or attitudes, in relation to B, elects to take or adopt one of them, and to reject the other, or to 'waive' his right in respect thereof, and A's declaration of such election or 'waiver' by words, conduct, or inaction, influences B to alter his position to his detriment, A is estopped, as against B, from thereafter resorting to the course of action which he has thus intimated his intention of relinquishing, dispensing with, or 'waiving'.

**[58]** But a caveat must be inserted. It is this. That we are now concerned only with the common law doctrine of election and it is quite distinct from, and it has got nothing to do with the equitable doctrine of election which in Scotland is generally referred to by the phrase 'approbate and reprobate' (see *Snell's Principles of Equity* (27th Ed) at p 484).

**[59]** Reverting back to the mainstream of the appeal, the learned judicial commissioner came to a finding that the appellant defendant is not a 'person interested' within the provisions of s 37(3) of the LAA 1960 and he relied on the case of *Menteri Besar Negeri Sembilan (Pemerbadanan) v Pentadbir Tanah Daerah Seremban & Anor* [1995] 3 MLJ 710; [1995] 4 CLJ 477, a decision of this court. With respect, factually speaking, that case can be distinguished from the facts of the present appeal. There, the Menteri Besar Negeri Sembilan (Pemerbadanan) is a statutory body with powers to undertake ventures of a commercial or industrial nature independently or jointly with another company. Here, the appellant defendant is a statutory agency of the Ministry of Public Works and has a statutory duty to supervise and execute the design, construction and maintenance of highways as determined by the Government as provided for in s 11(1)(a) of the Highway Authority Malaysia (Incorporation) Act 1980. That case did not show nor indicate whether the land administrator had served Form 'E' and Form 'G' on the appellant there and whether the appellant there had attended the enquiry. Neither did the case there showed as to who was the 'paymaster' for the award. In that case too, the Form 'D' notice for the proposed acquisition had indicated that the purpose was 'for a public purpose that is the creation of the Nilai New Town'. This therefore ruled out the involvement of any other person on whose behalf

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the land was acquired by the state authority. Moreover, all these issues were decided by the Land Reference Court and not by way of an originating summons like the present appeal at hand wherein the respondent plaintiff sought the declaratory reliefs against the appellant defendant before the learned judicial commisioner.

**[60]** In *Setia Usaha Tetap Kementerian Pelajaran v Collector of Land Revenue, Butterworth* [1972] 2 MLJ 155, the objection to the collector's award was made not by the landowner but rather by the Setia Usaha Kementerian Pelajaran on behalf of the Ministry of Education for whom the land was acquired and such objection was held to be in accordance with s 37(3) of the LAA 1960. Likewise here, the appellant defendant who was the 'paymaster' objected to the land administrator's award and the respondent plaintiff as the landowner had consented, without protest to receive the payment of the compensation after due enquiry by the land administrator.

**[61]** To understand the pith and core of the term 'person interested' an examination of some relevant authorities will now be undertaken. A liberal approach must be adopted in construing the term 'person interested' as intended by the Legislature. It must be emphasised that the appellant defendant has an interest in the compensation awarded by the land administrator and that would make the appellant defendant as a 'person interested' under s 2 of the LAA 1960.

**[62]** In *Magasu Sundram a/l T Magasu & Ors v Pentadbir Tanah Wilayah Persekutuan Kuala Lumpur* [2003] 5 MLJ 470; [2003] 2 CLJ 422, the High Court was confronted with an application by the intended intervener who was appointed to procure a higher award of compensation on behalf of the first claimant and having been promised a 10% share of any additional compensation he could obtain, sought to intervene in the proceedings between the claimants and the land administrator. In deciding whether the intended intervener fell within the scope of the term 'persons interested' in ss 2 and 14(2) of the LAA 1960, Azmel Ma'amor J (later FCJ) said at p 474 (MLJ); p 425 (CLJ) of the report:

> The term 'persons interested' is inconclusive and a person can be said to be a person interested if he has interest in the land either directly or indirectly or if he has an interest in the compensation in respect of the land acquired.

**[63]** The Indian Supreme Court in the case of *Himalaya Tiles and Marble (P) Ltd, v Francis Victor Coutinho (decd) by LR's* AIR 1980 SC 1118 at p 1121, had this to say in regard to the term 'person interested':

13 Thus, the preponderance of judicial opinion seems to favour the view

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that the definition of 'person interested' must be liberally construed so as to include a body, local authority, or a company for whose benefit the land is acquired and who is bound under an agreement to pay the compensation. In our opinion, this view accords with the principles of equity, justice and good conscience. How can it be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested even though its stake may be extremely vital?

**[64]** Again, the Indian Supreme Court in the case of *Sunderlal (in both the appeals) v Paramsukhdas and others (in both the appeals)* AIR 1968 SC 366 at p 369 had this to say:

> It will be noticed that it is an inclusive definition. It is not necessary that in order to fall within the definition a person should claim an interest in land, which has been acquired. A person becomes a person interested if he claims an interest in compensation to be awarded. It seems to us that Paramsukhdas is a 'person interested' within s 3(b) of the Act because he claims an interest in compensation.

**[65]** Continuing at p 370, the Indian Supreme Court said in the same case:

> It would be strange to come to the conclusion that the Legislature is keen that a person claiming an interest in compensation should be heard before the land is acquired but is not interested in him after the land is acquired.

**[66]** Back home, Richard Talalla JC (later J) in *Ng Kam Loon & Ors v Director of Public Works Department, Johore & Anor* [1990] 2 MLJ 229 at p 231, said:

> It is implicit that the inquiry by the Collector into the value of the land and the assessment of the amount of compensation which in his opinion is appropriate, pursuant to the provisions of s 12, is a function the nature whereof is judicial; a fortiori as by virtue of sub-s 2 of that section, the Collector is required to enquire into the respective interests of all persons claiming compensation or who in his opinion are entitled to compensation in respect of the land in question, and into the objections, if any, by any interested person to the area of the land in question. It seems to me therefore that it cannot be said that the relationship between the defendants is one of principal and agent.

**[67]** As the 'paymaster', the appellant defendant has the statutory right to file a notice of objection against the quantum of the award by filing Form 'N'. It would be grossly unfair and inequitable to deprive the appellant defendant of his statutory right to have his objections heard and adjudicated by the Land Reference Court. In the words of the Indian Supreme Court in the case of *Himalaya Tiles and Marble (P) Ltd v Francis Victor Coutinho (decd by LR's* at p 1121:

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> It is enough if he claims an interest in compensation, as distinguished from an interest in the property sought to be acquired. As long as a person claims an interest in the compensation, he is a person interested within the meaning of the definition of that expression.

**[68]** The LAA 1960 should be construed according to the intention expressed in the Act itself. The function of the court is to interpret an Act of Parliament and in doing so, according to Lord Parker CJ in *Capper & Anor v Baldwin* [1965] 2 QB 53 at p 61, it must be done 'according to the intent of them that made it and the intention must be deduced from the language used'. In the same vein, Donaldson J, said in *Corocraft Ltd & Anor v Pan American Airways Inc* [1969] 1 QB 616 at p 638, that 'The duty of the courts is to ascertain and give effect to the will of Parliament as expressed in its enactments'. Again, in the same vein but worded differently, O'Connor J, in *State of Tasmania v Commonwealth of Australia and State of Victoria* (1904) 1 CLR 329 said at p 358, 'I do not think that it can be too strongly stated that our duty in interpreting a statute is to declare and administer the law according to the intention expressed in the statute itself'.

**[69]** Equally germane to the occasion at hand would be the words of Lord Goddard CJ in *Regina v Wimbledon Justices, Ex parte Derwent* [1953] 1 QB 380 at p 384:

> ... although in construing an Act of Parliament the court must always try to give effect to the intention of the Act and must look not only at the remedy provided but also at the mischief aimed at, it cannot add words to a statute or read words into it which are not there, and, if the statute has created a specific offence, it is not for this court to find other offences which do not appear in the statute.

**[70]** I have to give effect to the words of the Legislature in defining the term 'person interested' in s 2 of the LAA 1960. The net is thrown wider by including 'every person claiming an interest in compensation to be made on account of the acquisition of land under the LAA 1960' and it would certainly include the appellant defendant herein. That is the manifest and expressed intention of Parliament (*Attorney-General for Canada & Anor v Hallett & Carey Ld & Anor* [1952] AC 427 at p 449).

**[71]** Next, in regard to the declaratory reliefs which the respondent plaintiff sought in the originating summons it should not be granted because an alternative remedy existed by way of the Land Reference proceedings which have yet to begin (*Development & Commercial Bank Bhd v Land Administrator, Wilayah Persekutuan & Anor* [1991] 2 MLJ 180 (SC)). The declaratory reliefs should also not be granted because it would be contrary to

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public policy (*British Association of Glass Bottle Manufacturers, Lim v Forster & Sons, Lim* (1917) 86 LJ Ch 489 at pp 494–495).

**[72]** Finally, in seeking those declaratory reliefs by way of an originating summons without making the land administrator as a party when the declaratory reliefs sought would affect the statutory duties and powers of the land administrator cannot be condoned by this court. In *Air Express International (M) Sdn Bhd v MISC Agencies Sdn Bhd* [2008] 9 CLJ 209, the plaintiff sought various declaratory orders against the Customs Department. Since the latter was not made a party and had no opportunity to defend itself, Abdul Wahab Patail J, rightly refused to grant the declarations against the Customs Department.

**[73]** The caution that was given by Viscount Maugham in the House of Lords in the case of *London Passenger Transport Board v Moscrop* [1942] AC 332 at p 345 should be heeded. There His Lordship said:

> I also think it desirable to mention the point as to parties in cases where a declaration is sought. The present appellants were not directly prejudiced by the declaration and it might even have been thought to be an advantage to them to submit to the declaration, but, on the other hand, the persons really interested were not before the court, for not a single member of the Transport Union was, nor was that union itself, joined as a defendant in the action. It is true that in their absence they were not strictly bound by the declaration, but the courts have always recognised that persons interested are or may be indirectly prejudiced by a declaration made by the court in their absence, and that, except in very special circumstances, all persons interested should be made parties, whether by representation orders or otherwise, before a declaration by its terms affecting their rights is made.

**[74]** For the reasons adumbrated above, I allowed the appellant defendant's appeal with costs here and below and I too set aside all the orders of the learned judicial commissioner. The deposit should be returned to the appellant defendant.

**[75]** This is my supporting judgment to that of my learned brother Jeffrey Tan Kok Wha JCA.

*Appeal allowed with costs.*

Reported by Kanesh Sundrum